Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Commission's Cable Horizontal and	)	
Vertical Ownership Limits	)	MM Docket No. 92-264

Comments of
Communications Workers of America

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I. INTRODUCTION AND SUMMARY

CWA is a labor organization representing approximately 700,000 workers employed in all segments of the media industry, including cable, broadcasting, publishing, wireline, and wireless telecommunications. CWA also represents workers employed in manufacturing, airlines, health care, state and local government, and other public and private organizations. CWA members are consumers of communications services and citizens with an interest in the widest possible dissemination of diverse programming over our nation's cable systems.

The Commission should establish a 27 percent horizontal ownership limit on the number of subscribers a cable operator may service and retain its original 40 percent vertical limit on the number of channels a cable operator may devote to its affiliated programming. These limits will ensure that no one cable operator, operating individually or in concert with another large cable company, can exercise market power to foreclose the ability of a video programmer to reach the crucial break-even 50 million subscribers that has been established as the industry threshold for viability.

It is long past time for the Commission to adopt strong limits on cable television ownership to promote the First Amendment goal of media diversity. Thirteen years ago, Congress mandated that the Commission establish ownership limits to preserve the public interest in diversity and competition in video programming. Four years ago, the United States Court of Appeals for the District of Columbia Circuit upheld the constitutionality of the statutory provision, but remanded the Commission's 30 percent horizontal ownership limit and 40 percent channel occupancy limits. The Court expressly *did not* *reject* the specific numerical limits, but rather instructed the Commission to develop a more complete record justifying these limits.

Since 1992, consolidation in the cable industry and the multi-channel video distribution (MVPD) industry has accelerated, particularly with Comcast's purchase of AT&T Broadband in 2002 and the increase in regional clustering. As of this writing, the Commission has before it a request by Comcast and Time Warner to divide up the nation's fifth largest cable operator, Adelphia, and to swap numerous cable systems to increase regional concentration. If the Commission approves that transaction without modification, Comcast will have 26.8 million subscribers and Time Warner will have 16.6 million subscribers. Together, these two media giants will control access to 43.4 million cable households, representing 65.6 percent of the nation's 66.1 million cable subscribers. If one adds in satellite, Comcast and Time Warner will control access to 46.9 percent of the nation's 92.6 million pay-TV subscribers. The Commission must delay consideration of that transaction until *after* it sets strong cable ownership limits in this instant proceeding.

As the large cable operators have consolidated their market power, they have exercised that power not only by raising prices above competitive levels and favoring their affiliated programming, but they have used that power to reduce labor standards in the broad communications industry and to deny workers at the large national cable companies their legal rights to freedom of association and organization. Compensation, training, and job security standards in the cable industry trail far behind those in the telecommunications industry a whole, with a corresponding negative effect on the economy and the public interest.

II. THE COMMISSION SHOULD ADOPT STRONG CABLE OWNERSHIP LIMITS TO PROMOTE THE FIRST AMENDMENT PRINCIPLE OF MEDIA DIVERSITY

The Commission should adopt strong cable ownership rules to affirm the First Amendment principle that the widest possible dissemination of information and entertainment from diverse and antagonistic sources is essential to public welfare. As the Commission has repeatedly stated and as the Courts have continually confirmed, common ownership of media reduces viewpoint diversity and competition. Therefore, structural rules limiting concentrated ownership in the cable industry are necessary to protect and promote the free and vibrant media diversity that is so vital to our democracy.

The Supreme Court has emphasized the Commission's duty and authority to promote diversity and competition among media voices based on the principle that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[1] The Supreme Court has found that decentralization of information production serves values that are central to the First Amendment. Thus, the Court concluded that the Commission's interest in "promoting widespread dissemination of information from a multiplicity of sources" is an "important government interest."[2]

[1] *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 663 (1994) quoting *United States V. Midwest Video Corp.,* 406 U.S. 649, 668 n.27(1972).
[2] *Turner Broadcasting,* 512 U.S. at 663.

III. THE CABLE AND MVPD MARKETS ARE HIGHLY CONCENTRATED AND EXHIBIT STRONG EVIDENCE OF MARKET POWER BY DOMINANT CABLE COMPANIES

A. Market Power In The Video Distribution Market Allows A Dominant Carrier To Foreclose Competition In The Video Programming Market

The video programming market is comprised of a downstream market for the distribution of multichannel video programming to households, and an upstream market for the purchase of video programming by multichannel video distributors (MVPDs).[3] These two markets are interrelated. A large cable operator's ownership of a dominant share of the cable franchises either nationwide or regionally enables the cable system operator, either unilaterally or in concert with another large cable system operator, to determine by their program carriage decisions which programmers survive in the video programming market. The fact that many cable operators are also producers or packagers of video programming exacerbates the problem, since cable operators have the financial incentive to favor airing their affiliated programming on their systems, and to block airing of their affiliated programming on competitors' systems. Because concentration in the video distribution market harms diversity and competition in the video programming market, Congress and the Commission have been alert to the problems of market power and vertical integration of video distributors and programmers in this industry.[4]

[3] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Eleventh Annual Report, ("Eleventh Annual Report") MB Docket No. 04-227, 135, Feb. 4, 2005.
[4] "Ultimately, the more concentration among buyers, the more likely buyers will possess market power over programming." *AT&T-Comcast Order,*36. *Eleventh Annual Report*, 135.

B. The Cable Industry is a Unique "Tight Oligopoly" with Tightly Related and Reinforcing Local and National Market Structures

Economic analysis and real-life experience of independent programmers trying to break into the video industry illustrate the "unique and deviant" nature of the cable television and MVPD markets. Dr. William G. Shepherd notes that the cable television industry has two "tightly related and reinforcing" major sets of markets: the *local-monopoly level of markets* and the *national market level*. Dr. Shepherd describes the national market as a "tight oligopoly," dominated by a few large firms, particularly Comcast and Time Warner. Their small number leads them to behave like a "shared monopoly," which set high prices and reap high profits at consumers' expense. They are strongly induced to cooperate and develop similar prices structures.[5] (Dr. Shepherd's paper is attached to these comments.)

According to Dr. Shepherd, in normal markets, 30 percent market share leads to substantial market power. But cable markets are anything but "normal" markets. Dr. Shepherd identifies cable markets as "unique and deviant" due to their two-layer market structure. The standard monopoly effects are intensified in the cable industry by the underlying array of local cable TV monopolies. Since new competitors can't enter the local cable TV markets, the larger national parent firms are strongly protected against new entry and from any strategies by the existing firms to increase their market shares. While other industries may be dominated by a few big sellers, they "don't have thousands of local monopolies under their ownership and control."[6]

According to Dr. Shepherd, evidence of market power can be seen in the pricing

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[5] William G. Shepherd, *Basic Economics: The FCC Should Set a 30 Percent Limit on Cable TV Market Shares* ("Shepherd Paper") Washington D.C.: Economic Policy Institute Working Paper No. 272, July 2005, 1. This paper is attached to these comments.

behavior of the top cable companies. First, for over two decades, with one brief exception when cable rates were regulated in the mid 1990s, cable prices have escalated at more than twice the rate of inflation. Between 1985 and 1993, cable rates rose twice as fast as overall consumer prices, on average. Only when a degree of regulation was applied between 1993-95 was there a pause in this rapid cable rate escalation. After cable rates were once again deregulated, cable prices increased 125 percent faster than the overall CPI, between 1997 and 2004.[7] Moreover, as the Government Accounting Office and this Commission have carefully documented, satellite does not act as a constraint on cable price escalation.[8]

Second, cable companies all rigidly apply similar price structures, such as multiple-channel packaging. According to Dr. Shepherd, this pricing structure is aimed at maximizing the companies' own profits, rather than reflecting either consumer demands, underlying technical patterns, or efficiencies. The effect goes directly against consumers'

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[6] *Id.,* 2-3.

[7] *Id., See* Figure 1. Dr. Shepherd emphasizes that increased market penetration by DBS has not reduced the pricing power of cable TV providers. He therefore concludes that DBS is not a substitute for cable, and represents a distinct market. 3-4.

[8] A recent report by two commission economists, found that high switching costs between cable and direct broadcast satellite (DBS) "limits substitution between cable and DBS services…" The report found that consumers view DBS as a substitute only for niche and higher quality services such as premium movies or dedicated sports channels. (Andrew S. Wise and Kiran Duwadi, *Competition between Cable Television and Direct Broadcast Satellite – It's More Complicated than You Think,"* FCC Media Bureau Staff Research Paper and International Bureau Working Paper, Jan. 2005, 20.) Recent work by the commission and the Government Accounting Office reaches similar conclusions, finding significant cable price decreases and quality increases only where there are alternative cable providers ("overbuilders") but not where there is significant DBS presence. (A. Goolsbee and A. Petrin, "The Consumer Gains from Direct Broadcast Satellites and the Competition with Cable TV," *Econometrica. 72:351-381;* S.J. Savage and M. Wirth, "Price, Programming and Potential Competition in U.S. Cable Television Markets," *Journal of Regulatory Economics.* 27(1): 25-46; Jerry Hausman, *Declaration of Professor Jerry A. Hausman,* Appendix A to *Petition of SBC Communications to Deny Application In the Matter of Applications for Consent to the Transfer of Control of Licenses of MediaOne Group, Inc., Transferor to AT&T Corp., Transferee,* CS Docket No. 99-251; Mark Cooper, *Cable Mergers and Monopolies: Market power in Digital Media and Communications Networks,* Washington, D.C.: Economic Policy Institute, 2002, 22-24.) Other economists conclude that premium cable is a closer substitute for DBS than the equivalent of cable's most popular services and that high switching costs between the two platforms continues as a barrier to consumer substitution. (Douglas Shapiro, *What Changed in the Cable-DBS Dynamic in 2Q?* Bank of America

interests. Consumers have to accept and pay for many channels that they don't want. They cannot even negotiate with their cable TV firm to get the channels they want. This violates the basic tenet of the free market: consumer choices should be open, free, and flexible. As Dr. Shepherd notes, these imaginary packages are evidence of market power in the cable industry. "If there were competition, it would quickly drive the packaging out and force the selling of precisely those individual channels that people want." The packaging is "a classic instance of monopoly pricing rigidity: it's thorough, it's agreed on by all the major 'competitors,' it's a major source of excess profits, and it's familiar from the past history of powerful monopolies and dominant firms."[9]

Independent programmers, DBS providers, and cable over-builders have provided substantial evidence to the Commission of the ways in which the two-tiered market structure allows the dominant cable companies to foreclose independent programming on their systems and competition by alternative video programming distributors.

The America Channel, an independent network established to provide family-friendly cable programming, identifies three critical thresholds of viability for cable networks: 20 million subscribers (below which a network cannot be Nielsen rated); 50 million subscribers (a minimum threshold for national advertisers); and regional dominance in the top television markets. We will discuss the numeric thresholds below. Regarding the unique two-tiered nature of the market, The America Channel notes that an independent network must have carriage in the top television markets in order to attract advertisers (the primary source of revenue for an ad-supported network.) This regional dominance in top markets is not replicated by DBS providers who may have substantial subscriber

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Securities, Aug. 27, 2004, 7.)

totals, but as a result of their national dispersion do not share the top cable companies' pocket monopolies and gate-keeping ability with respect to top markets. Access to subscribers in key regional markets, then, is essential to an independent networks' path to profitability required for initial investment from venture capitalists and carriage by other MVPDs.[10] The increased clustering that characterizes the cable industry reinforces national market power.

This is particularly evident in the way the dominant cable companies are able to use their control over must-have regional sports programming to limit the competitive threat of both satellite providers and cable over-builders, taking advantage of the terrestrial loophole in the cable must-carry rules.

C. Increased Regional Clustering Strengthens Cable Operators' Market Power, Control over Must-Have Regional Sports Programming, and Provides a Powerful Barrier to Competitive Entry

The Commission has noted that regional clustering of cable franchise systems represents a significant barrier to competitive entry. Clustering increases the bargaining power of the dominant incumbent cable operator, and as a result, programmers often accede to their demands either by negotiating steep discounts, or even more seriously, refusing altogether to sell their programming to competitors who lack a critical mass of subscribers. Clustering enables MSOs to concentrate their subscribers and achieve market share levels throughout many of the largest DMAs that they previously enjoyed only in their individual franchise areas, thus becoming virtually indispensable to local

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[9] *Id.* 4-5.

[10] The America Channel Petition to Deny ("The America Channel"), *In the Matter of Applications for the consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation, Assignors, To Time Warner Cable Inc, Assignees; Adelphia Communications Corporation, Assignors to Comcast Corporation; Comcast Corporation, Transferor, to Time Warner Inc., Transferee, Time Warner Inc., Transferor to Comcast Corporation, Transferee,* July 21, 2005, 19-20, 33-36.

and regional programmers seeking distribution.[11]

Clustering gives the dominant incumbent cable operator the incentive and the ability to use their control over sports and other regional programming to foreclose entry by competitors. In the *Eleventh Annual Report* on video programming, the Commission highlighted the "strategic significance" of sports programming for MVPDs because of its widespread appeal, noting that many of these networks are owned in whole or in part by MSOs.[12] In 2004 alone, the New York Mets, Time Warner, and Comcast announced the creation of a new regional sports network covering the Mets' regular-season games beginning in 2006; Comcast launched a new sports network featuring the games of the Cubs, White Sox, Blackhawks, and Bulls. Comcast also announced similar plans in Detroit and California. In North and South Carolina, Carolina Sports Entertainment Television Network (C-SET) launched on Time Warner cable systems. In Kansas City, Time Warner initiated an agreement to replace local broadcaster KCTV's sports department with programming from its own Metro Sports Channel.[13]

Incumbent cable operators continue to refuse to provide their affiliated must-have regional sports programming to competitors, such as satellite companies and cable overbuilders.

- Satellite TV subscribers in Philadelphia cannot get the Flyers, 76ers, or Phillies' games on their dish. Comcast owns the Flyers and 76ers and TV rights to the Phillies and refuses to negotiate a deal with satellite providers. As a result, penetration rates of DBS providers in the Philadelphia are well below the national average.[14]

- In North and South Carolina, the recently launched C-SET sports network will

[11] *Eleventh Annual Report*, 157; *Second Further NPRM*, 62.
[12] There were 38 regional networks devoted to sports in 2004, a 27 percent increase over the prior year. This represents 40 percent of the 96 regional networks. *Eleventh Annual Report,* 10, 166.
[13] *Eleventh Annual Report,* 166-167.
[14] *Id.,* 155, fn. 687.

be carried exclusively on Time Warner cable systems. Satellite provider DIRECTV has been unable to gain access to the programming, and C-SET claims on its web site that it will not be available on satellite systems.[15]

- In Washington, D.C. baseball fans cannot get the Washington Nationals games on the local Comcast cable systems. Comcast refuses to air the programs because the Nationals cut a deal with the Mid-Atlantic Sports Network – which is not owned by Comcast – to air their games along with those of the Baltimore Orioles.[16]

- In Kansas City, MO, Time Warner has refused to make its Metro Sports Channel available to DBS operators, although it reached a distribution agreement with Comcast.[17]

- In New York City, Cablevision, owner of MSG Network and Fox Sports New York, refused to provide access to the sports network programming to Time Warner cable, shutting out 2.4 million Mets, Knicks and MetroStars in spring 2005. The dispute dates back to a 2002 fight when Cablevision refused to air the Yankees' YES Network, denying 3 million fans access to Yankees games.[18]

The success of regional sports networks depends, in large part, on whether the local cable operator has an ownership stake connection in the network. In October 2003, the owners of the Minnesota Twins launched Victory Sports One to provide exclusive distribution of the Twins' baseball games. Victory Sports One was unaffiliated with any distribution company, signed carriage agreements with 30 small cable operators in Minnesota, but could not reach agreement with Comcast, Time Warner, or the other large MVPDs in the state. Victory Sports One ceased operation in May 2004.[19]

Increased national and regional concentration, vertical integration, control over must-have sports programming, and other barriers to entry have resulted in increased market

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[15] *Id.*
[16] Thomas Heath, "FCC Asked by O's To Rule on Nats TV Stalemate; Comcast Struggle Continues," *The Washington Post,* June 15, 2005, E-01.
[17] *Eleventh Annual Report,* 167.
[18] Richard Sandomir, "Cable Dispute Over Mets Is Settled," *The New York Times,* May 10, 2005, Section D-2.
[19] *Id.,* 166.

power by the large cable operators. The Commission must establish a horizontal ownership limit consistent with these changes in cable and MVPD industry market structure.

IV. THE COMMISSION SHOULD SET THE HORIZONTAL CABLE SUBSCRIBER LIMIT AT 27 PERCENT OF MVPD HOUSEHOLDS

As noted earlier, there are two key thresholds that independent programmers must meet to establish viability: 20 million subscribers (for Nielsen ratings) and 50 million subscribers (for national advertising). In fact, investors focus on the 50 million subscriber threshold, since for many advertisers this is the minimum distribution base to receive national advertising on a non-discounted basis.[20]

The America Channel analyzed 92 national, non-premium cable programming networks that reached the critical 20 million household milestone to understand what it takes to reach this critical threshold. Among these 92 networks, not a single one achieved this milestone without carriage by either of the two largest cable operators, either Comcast, Time Warner, or both. Of the 92 networks, there were only two that were carried by either Comcast or Time Warner, but not both: the NFL Network and the Inspiration Network (a donor supported religious channel). Moreover, <u>both Comcast and</u>

[20] The America Channel, 16-20. In comments filed in the *A La Carte* proceeding, Oxygen stated that a network must reach 45 to 50 million subscribers to survive; other commentators put the number at 50 million (GSN, Viacom), 50 to 60 million (Crown Media), 40 million (TV One), and 30 to 40 million (A&E). Additionally, Oxygen emphasized that the network must be placed on the basic tier to get the necessary exposure. Because advertisers are interested in subscriber growth, even at 50 million or more, a network must be able to demonstrate its distribution is growing, or risk advertiser abandonment. *See Comment Requested on A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems,* ("*A La Carte")* 19 FCC Rcd 9291 (1994). In fact, subscriber data on successful new networks confirm these findings. In 2004, Oxygen had a reach of 49 million subscribers, National Geographic reached 47 million subscribers, and Style Channel had 34 million subscribers. *See NCTA Cable Developments 2004* at 143, 134, 172. A recent Media Bureau staff report found that a network requires approximately 42 million subscribers to have a 70 percent probability of survival over its first 10 years. *See* Keith S. Brown, *A Survival Analysis of Cable Networks,* Media Bureau Staff Research Paper No. 2004-1, Dec. 7, 2004 (rel).

Time Warner carried all of the networks with distribution to 25 million households.[21]

As a practical matter, the two largest cable companies are able to serve as gatekeepers in the programming market once they reach the 25 million household threshold. The high correlation between the carriage decisions of Comcast and Time Warner demonstrate that denial of carriage by *either* company constitutes a death sentence for any new network. Thus, the Commission must set a horizontal ownership limit that would block the ability of a cable operator to foreclose a new entrant in the programming market either by unilateral or concerted action with another dominant player.

As The America Channel explains, if two cable operators become so large, as is the case today with Comcast and Time Warner, neither one is willing to dedicate channel capacity, marketing, and other resources to distribute a product if the other dominant cable provider does not also carry the network. This is even more true for smaller networks that will not take the risk if a programmer's survivability is uncertain. In short, denial of access by either Comcast or Time Warner has spillover effects on each others carriage decision and on the smaller distributors' carriage decisions.[22]

The Commission therefore must adopt a horizontal ownership limit that blocks the ability of two dominant cable operators, operating individually or in collusion, to foreclose the ability of an independent programmer to reach the 50 million household threshold. This would require a horizontal limit below 25 million households for any one cable operator, so that Cable Operator A's 24.99 million plus Cable Operator B's 24.99 million remains below the critical sum of 50 million households. To be sure, even an ownership limit set at this level is conservative, since it allows two dominant players to

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[21] The America Channel, 21-22.

reach just below the 50 million mark.

According to the Commission's most recent cable report, there were 92.6 million MVPD households in June 2004.[23] A horizontal limit equivalent that would set an ownership cap below 25 million households would be equivalent to 27 percent of all MVPD households (25 million divided by 92.6 million).

The market conditions have changed since the Commission established the 30 percent limit in 1993. As we have demonstrated, satellite, despite its growing share of the national video market, does not constrain price increases. It is better described as a niche market competing for high-end subscribers than as a direct substitute for cable. Moreover, satellite does not provide voice telephony or high-speed Internet access that consumers increasingly demand as part of the triple-play of bundled services.[24] Finally, numerous barriers to competitive entry continue to disadvantage satellite providers, including cable operators' exclusive access to programming, especially sports programming; anti-competitive 'predatory pricing'; and limited access to multiple dwelling units (MDUs), among others.[25]

In addition, the increased regional and national concentration that has occurred since 1992 has established an even higher threshold of 50 million households as the break-even point for network viability. As market evidence demonstrates, today even the #2 cable operator has been unwilling to carry a network that the #1 cable operator has rejected.

Therefore, to promote diversity of programming, the Commission therefore must

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[22] *Id.,* 27.
[23] *Eleventh Annual Report,*
[24] "DIRECTV states its high-speed Internet access services "is not competitive with terrestrial high-speed Internet offerings because it costs almost twice as much as available DSL and cable modem service." EchoStar does not currently offer satellite-based broadband Internet service. *Eleventh Annual Report*, 66.
[25] *Eleventh Annual Report*, 137.

adopt a horizontal limit that would limit any one cable operators' reach to less than 25 million households, or 27 percent of MVPD households.

V. CONCENTRATION IN THE CABLE INDUSTRY HAS HARMED WORKERS IN THE INDUSTRY

The cable industry began as a "mom and pop" industry, with small carriers operating local franchises. In this climate, cable workers in a number of franchises throughout the country obtained union representation and negotiated collective bargaining agreement. As the large cable operators began to buy the smaller cable operators, they inherited these collective bargaining relationships. In the same way that national coordination came to dominate the large cable companies' relationships with communities, programmers, and advertisers, these large cable companies adopted nationally-driven policies to stall contract negotiations, launch union decertification drives, and threaten and intimidate workers who seek union representation.

The largest cable company, Comcast, has launched a concerted corporate campaign to deny its employees their legal rights under the National Labor Relations Act (NLRA) to union representation and to bargain collectively over wages, benefits, and working conditions. The National Labor Relations Board (NLRB) has repeatedly cited Comcast for its violations of labor law. Below we list a few examples. We attach to these comments two reports that provide a more detailed account of Comcast's abusive labor policies. In these comments, we cite some of the most glaring violations.

- **Lanham, Md.** On April 13, 2005, an Administrative Law Judge for the National Labor Relations Board ruled that Comcast had illegally fired two workers for their union activities during an organizing drive in 2002 and 2003. The Judge required Comcast to reinstate the workers with back pay and ruled against the company on 11 unfair labor practices. According to the decision, the company violated the National Labor Relations Act by "coercing… threatening… and interrogating" employees. Comcast may appeal the decision.

- **Pittsburgh, Pa.** In 2002, Comcast illegally fired two Pittsburgh area technicians who were union supporters. A year later, both were ordered reinstated by arbitrators, along with back pay and compensation for lost benefits.

  Workers in Pittsburgh continue to fight for a first contract, nearly four years after voting for a union voice. In fact, these workers have voted for union representation in three National Labor Relations Board (NLRB) elections.

  But under current labor law, they and more than 2,000 others who voted for a union can't get a contract.

  A worker in Beaver Falls, Pa., also was fired for trying to organize a union.

  Comcast's latest tactic: Pittsburgh area layoffs that target union supporters and blame the Communications Workers of America for the job losses.

  Comcast is so determined to keep out the union that it won't agree to contract language in Pittsburgh that it has agreed to at other locations.

- **Hialeah, Fla.** Comcast fired a union supporter who was called to active duty with the Navy in Guantanamo Bay in 2001. Comcast refused to return this employee to work after his military service was finished. The NLRB determined that Comcast had erred and called on the company to reinstate the worker. When Comcast refused, the NLRB issued a complaint. The worker accepted a cash settlement.

- **Ocean City, Md.** Comcast orchestrated a decertification campaign by refusing to provide the retiree health care benefits that are standard at non-union facilities to workers at Ocean City. Three technicians nearing retirement age were forced to choose between retirement security and union representation.

- In **Sacramento, Cal.** in 2003, Comcast found an employee to press for decertification of the union. That employee was rewarded with a promotion into a non-union represented job.

- **Los Angeles, Cal.** A similar tactic was used in Los Angeles, where an employee who agreed to head up the decertification campaign was made a maintenance supervisor. The company permitted workers to distribute anti-union material on company time. A Comcast manager even told workers there that he had been ordered to "do whatever it takes to get rid of the union in Los Angeles."[26]

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[26] American Rights at Work, *No Bargain: Comcast and the Future of Workers' Rights in Telecommunications,"* June 2004. *See also* Jobs with Justice, *This is Comcast: Silencing Our Voice at Work: A Report based on testimony by Comcast workers at the first Jobs with Justice National Workers Rights Board Hearing,* June 2, 2004. Both reports are filed in the Appendix to these Comments.

- **South Chicago, Ill., Pullman District along with Kankakee and Morris, Il**. In 2004, Comcast was very influential in the decertification election. Comcast held back benefits and wages from the organized members. Comcast stalled and refused to meet for negotiation sessions and would only offer reduced benefits and wages compared to the nonunion employees in the same geographic area. Comcast was holding captive audience meetings telling the employees that the nonunion employees were getting better benefits and wages.

Just three years ago, Comcast purchased AT&T Broadband. During the transfer review process, Comcast promised union members and local franchise authorities that it would respect the collective bargaining agreements negotiated between AT&T Broadband and union members. Comcast leaders pledged to continue the fair labor management practices established by the parties. By law, Comcast was minimally required to recognize the unions.

However, once Comcast took over operations, it began a process of delaying contract negotiations. While it is illegal for a company to encourage workers to file for a decertification election, a Comcast Senior Vice President and General Manager asserted at a regular meeting of the Metropolitan Area Communications Commission in Beaverton, Ore.: "I will tell you we're going to wage war to decertify the CWA."

Cable workers' compensation lags far below compensation for comparable employees in the telecommunications industry. A cable technician that does comparable work to a telephone technician earns, on average, $18,000 less per year, or 26 percent less in wages and benefits. For a customer service representative, the gap is $24,000 per year, or 43 percent less in wages and benefits. Similarly, cable technicians receive substantially less training (for technicians, 45 weeks for initial training compared to 102 weeks in the telephone industry; for customer service representatives, 18 weeks for initial training compared to 52 weeks in the telephone industry) and have much higher rates of turnover (18 percent annual turnover per year for cable techs compared to 2 percent a year in the telephone industry).[27]

In sum, the dominant cable operators have used their market power not only to abuse consumers and communities with higher prices and low quality, but also to deny their employees their right to representation and a collective bargaining agreement, with the result that workers in the industry earn below-industry standard wages, and receive inadequate training, with resulting high turnover rates, with consequent impact on the service quality provided to cable consumers, local communities, and the economy.

V. CONCLUSION

The Commission should act promptly to curb abusive market power in the cable industry and promote diversity in video programming by establishing a strong vertical ownership limit of 27 percent and retain its original 40 percent vertical limit on the number of channels a cable operator may devote to its affiliated programming. These limits will ensure that no one cable operator, operating individually or in concert with another large cable company, can foreclose the ability of a video programmer to reach the crucial break-even 50 million subscriber threshold for viability. Moreover, such limits could provide some curb on cable operators arrogant disregard of their employees' rights to freedom of association and collective bargaining.

Respectfully submitted,

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[27] Jeffrey H. Keefe, *Racing to the Bottom: How antiquated public policy is destroying the bet jobs in telecommunications,* Washington DC: Economic Policy Institute, 2005.